

EXHIBIT 6

6/29/2021

Federal Sentencing of Child Pornography: Non-Production Offenses | United States Sentencing Commission

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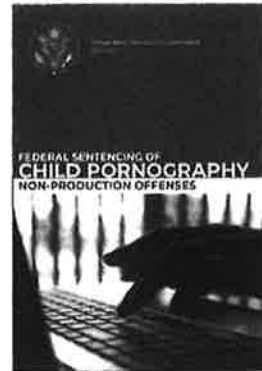
FEDERAL SENTENCING OF CHILD PORNOGRAPHY: NON-PRODUCTION OFFENSES

Overview

(Published June 29, 2021) This report updates and expands upon the Commission's 2012 *Report to the Congress: Federal Child Pornography Offenses*. In this report, the Commission provides data from fiscal year 2019 regarding:

- the **content** of the offender's child pornography collection and nature of the offender's collecting behavior;
- the offender's degree of involvement with other offenders, particularly in an internet **community** devoted to child pornography and child sexual exploitation; and
- the offender's engagement in sexually abusive or exploitative **conduct** in addition to the child pornography offense.

The report also examines the evolution of technology since the 2012 *Child Pornography Report* its continued impact on offender conduct and the widespread applicability of sentencing enhancements. Lastly, it provides a recidivism analysis of non-production offenders.



A subsequent report will analyze offenders sentenced under the guideline for production of child pornography offenses.

Related Materials

- *Report to the Congress: Federal Child Pornography Offenses* (2012)
- *The History of the Child Pornography Guidelines* (2009)

Key Findings

- **Facilitated by advancements in digital and mobile technology, non-production child pornography offenses increasingly involve voluminous quantities of videos and images that are graphic in nature, often involving the youngest victims.**
 - In fiscal year 2019, non-production child pornography offenses involved a median number of 4,265 images, with some offenders possessing and distributing millions of images and videos.
 - Over half (52.2%) of non-production child pornography offenses in fiscal year 2019 included images or videos of infants or toddlers, and nearly every offense (99.4%) included prepubescent victims.
- **Constrained by statutory mandatory minimum penalties, congressional directives, and direct guideline amendments by Congress in the PROTECT Act of 2003, §2G2.2 contains a series of enhancements that have not kept pace with technological advancements. Four of the six enhancements— accounting for a combined 13 offense levels—cover conduct that has become so ubiquitous that they now apply in the vast majority of cases sentenced under §2G2.2.**
 - For example, in fiscal year 2019, over 95 percent of non-production child pornography offenders received enhancements for use of a computer and for the age of the victim (images depicting victims under the age of 12).
 - The enhancements for images depicting sadistic or masochistic conduct or abuse of an infant or toddler (84.0% of cases) or having 600 or more images (77.2% of cases) were also applied in most cases.
- **Because enhancements that initially were intended to target more serious and more culpable offenders apply in most cases, the average guideline minimum and average sentence imposed for nonproduction child pornography offenses have increased since 2005.**
 - The average guideline minimum for non-production child pornography offenders increased from 98 months in fiscal year 2005 to 136 months in fiscal year 2019.

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- In fiscal year 2019, less than one-third (30.0%) of non-production child pornography offenders received a sentence within the guideline range.
 - The majority (59.0%) of non-production child pornography offenders received a variance below the guideline range.
 - Non-government sponsored below range variances accounted for 42.2 percent of sentences imposed, and government sponsored below range variances accounted for 16.8 percent.
- **Section 2G2.2 does not adequately account for relevant aggravating factors identified in the Commission's 2012 *Child Pornography Report* that have become more prevalent.**
 - More than forty percent (43.7%) of non-production child pornography offenders participated in an online child pornography community in fiscal year 2019.
 - Nearly half (48.0%) of non-production child pornography offenders engaged in aggravating sexual conduct prior to, or concurrently with, the instant nonproduction child pornography offense in fiscal year 2019. This represents a 12.9 percentage point increase since fiscal year 2010, when 35.1 percent of offenders engaged in such conduct.
 - **Consistent with the key aggravating factors identified in the Commission's 2012 *Child Pornography Report*, courts appeared to consider participation in an online child pornography community and engaging in aggravating sexual conduct when imposing sentences, both in terms of the length of sentence imposed and the sentence relative to the guideline range.**
 - In fiscal year 2019, the average sentence imposed increased from 71 months for offenders who engaged in neither an online child pornography community nor aggravating sexual conduct, to 79 months for offenders who participated in an online child pornography community, to 134 months for offenders who engaged in aggravating sexual conduct.
 - In fiscal year 2019, offenders who engaged in aggravating sexual conduct were sentenced within their guideline ranges at a rate nearly three times higher than offenders who did not participate in online child pornography communities or engage in aggravating sexual conduct (44.3% compared to 15.6%).
 - **As courts and the government contend with the outdated statutory and guideline structure, sentencing disparities among similarly situated non-production child pornography offenders have become increasingly pervasive. Charging practices, the resulting guideline ranges, and the sentencing practices of judges have all contributed to some degree to these disparities.**
 - For example, the sentences for 119 similarly situated possession offenders ranged from probation to 228 months though these 119 possession offenders had the same guideline calculation through the application of the same specific offense characteristics and criminal history category.
 - The sentences for 52 similarly situated receipt offenders ranged from 37 months to 180 months though these 52 receipt offenders had the same guideline calculation through the application of the same specific offense characteristics and criminal history category.
 - The sentences for 190 similarly situated distribution offenders ranged from less than one month to 240 months though these 190 distribution offenders had the same guideline calculation through the application of the same specific offense characteristics and criminal history category.
 - **When tracking 1,093 nonproduction child pornography offenders released from incarceration or placed on probation in 2015, 27.6 percent were rearrested within three years.**
 - Of the 1,093 offenders, 4.3 percent (47 offenders) were rearrested for a sex offense within three years.
 - Eighty-eight offenders (8.1% of the 1,093) failed to register as a sex offender during the three-year period.

Download the full report.

